

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

SHANNON MARIE DAVIDSON,

Plaintiff,

v.

Case No. 1:17-cv-12686
Hon. Thomas L. Ludington

CITY OF ALMA, ZACHARY FERRIER,
JASON BIEHL and JACOB GULICK,
in their individual and official capacities,

Defendant.

**ORDER ADOPTING REPORT AND RECOMMENDATION, DISMISSING
COMPLAINT WITHOUT PREJUDICE, AND DENYING MOTION FOR SUMMARY
JUDGMENT AS MOOT**

On October 9, 2018, Defendants filed a motion for summary judgment. ECF No. 30. Plaintiff was ordered to respond to that motion on October 10, 2018. ECF No. 32. Instead of filing a response, Plaintiff filed a motion for more time to secure an attorney and in opposition to dismissal. ECF No. 34. Plaintiff was initially represented by counsel but a motion to withdraw was filed and it was granted on June 25, 2018. ECF No. 21. In the Order, Plaintiff was instructed that she had 30 days to find new counsel and that if no appearance were filed within that time period, “the Court will assume that Ms. Davison intends to proceed pro se in this matter.” ECF No. 21 at PageID.86. On June 26, 2018, the Court also granted a motion to stay the case and the deadlines associated with the Court’s scheduling Order to and including July 30, 2018, to allow Plaintiff to find new counsel. ECF No. 24. Pretrial matters were referred to Magistrate Judge Patricia T. Morris. ECF No. 28.

Plaintiff was unable to secure new counsel and therefore asked the Court for more time to do so. The Court found that Plaintiff had been given more than enough time and latitude to allow her time to find new counsel so Plaintiff's motion was denied. ECF No. 38. In the Order, the Court noted that since Plaintiff had not filed a proper response to the motion for summary judgment filed by all defendants, and since she may have been relying on the Court granting her an extension to find an attorney who could respond to the motion, the Court would allow Plaintiff time to file a response to Defendant's motion for summary judgment before analyzing that motion on the merits. The Court gave Plaintiff until January 22, 2019 to file any response to the summary judgment motion and warned Plaintiff that if no response was filed by that date, the Court could also recommend dismissal of Plaintiff's case for failure to prosecute under Fed. R. Civ. P. 41(b). *Id.* Plaintiff did not respond to the motion for summary judgment and has not appeared in any way since the Court's Order was entered on January 8, 2019.

On February 22, 2019, Judge Morris filed a report, recommending that the Court dismiss the complaint without prejudice under rule 41(b) for failure to prosecute and deny Defendant's motion for summary judgment as moot. ECF No. 39.

Although the magistrate judge's report explicitly states that the parties to this action could object to and seek review of the recommendation within fourteen days of service of the report, neither party has filed any objections. The election not to file objections to the magistrate judge's report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal. *Id.*

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation, ECF No. 39, is **ADOPTED**.

It is further **ORDERED** that the complaint, ECF No. 1, is **DISMISSED** without prejudice under rule 41(b) for failure to prosecute.

It is further **ORDERED** that Defendant's motion for summary judgment, ECF No. 30, is **DENIED** as moot.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: March 19, 2019

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney of record herein by electronic means and to **Shannon Marie Davidson**, 210 Hillsdale Street, Alma, MI 48801 by first class U.S. mail on March 19, 2019.

s/Kelly Winslow
KELLY WINSLOW, Case Manager